

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Richard A. Pals & Diamond K Company
Facility Id # 57746

**ADMINISTRATIVE
CONSENT ORDER
NO. 2011-AFO- 03**

TO: Richard A. Pals
1510 Balsam Ave
Alexander, IA
50420

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Richard A. Pals and Diamond K Company (collectively referred to as Mr. Pals) and the Iowa Department of Natural Resources (Department). Mr. Pals hereby agrees to pay a penalty in the amount of \$6,500.00 and in the future store manure in a manner that is compliant with the laws of the State of Iowa.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Eric Wiklund
IDNR Field Office #2
2300 15th St. SW
Mason City, Iowa 50401
Ph: 641/424-4073

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

II. JURISDICTION

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This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Mr. Pals owns and or operates a swine confinement facility consisting of 2,400 head of swine finishers. This facility is located at Sec 19 T92 R22, Scott Township, Franklin County. The property is locally known as 1510 Balsam Avenue, Alexander, Iowa 50420. The facility utilizes two uncovered, formed manure storage structures. The manure that was involved in the violations which are the subject of this Order originated from the west structure.
 2. On April 20, 1999, Mr. Pals was sent a Notice of Violation (NOV) letter via certified mail as follow up to an inspection conducted by Eric Wiklund, an Environmental Specialist Senior with the Department. In the NOV the Department informed Mr. Pals that during the inspection it was observed that the required minimum one foot of freeboard for uncovered, formed manure storage structures was not being maintained. This was a violation of 567 IAC 65.2(3)"b."
 3. On August 12, 2010, Mr. Wiklund responded to an anonymous complaint alleging that a manure storage tank on Mr. Pals' property was overflowing. Mr. Wiklund spoke to Mr. Pals on the phone before he went on site. Mr. Pals stated that although he knew the recent rain had made the tanks very full, he was not aware of a manure release. Once on site, Mr. Wiklund observed that a significant amount of manure had overflowed from the west storage structure and was on the ground near the tank. The manure flowed from the tank to a low area on the south side of the two storage structures. The manure flow stopped immediately adjacent to a tile intake. Mr. Wiklund did not believe any manure had entered the tile intake.
- Mr. Pals' son, Grant Pals, who runs the day to day operations at the confinement, was on site and spoke to Mr. Wiklund. Grant stated that he was aware of the overflow and that it had been occurring for approximately one week. Grant stated that he had been trying to get manure land applied but had

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been having difficulty. Mr Wiklund explained that Iowa law required that a minimum of one foot freeboard be maintained at all times for an uncovered, formed manure storage structure and that all spills must be reported to the Department as soon as possible but not later than 6 hours after onset or discovery. Based on Mr Wiklund's observation of dead vegetation in the path of the manure spill it appears the manure overflow had been occurring for longer than one week.

Picture 1

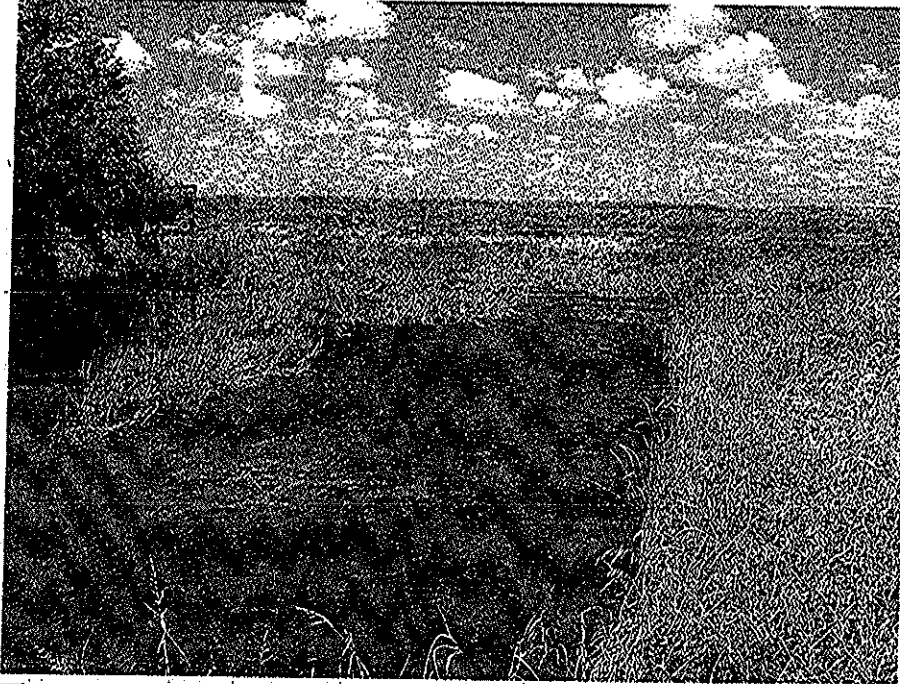


This picture shows the manure pump that Mr Pals used to transfer manure to the east tank and that the minimum 1 foot of freeboard has not been maintained.

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Picture 2



This picture shows the extent of the manure spill and the dead vegetation.

Picture 3.



This picture shows that manure has overflowed the manure storage structure

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4. On August 12, 2010, the Department mailed Mr. Pals a NOV for the above discussed violations. This letter explained the following: (1) 567 IAC 65.2(3) requires that a minimum level of waste control for a confinement feeding operation shall be the retention of all waste between periods of application; (2) 567 IAC 65.2(3)"b" requires that manure stored in an unroofed formed manure storage structure shall be removed from the structure as necessary to maintain minimum of one foot freeboard; (3) 567 IAC 65.2(9) requires that a person storing, handling, transporting or land-applying manure from an animal feeding operation who becomes aware of a release shall notify the Department of the occurrence of the release as soon as possible but not later than six hours after onset or discovery; (4) the manure released on the ground must be removed and land applied in accordance with Department rules and the Department must be contacted when cleanup is completed; and (5) within 10 days of receipt of the NOV Mr. Pals was required to respond to the Department in writing explaining the actions that will be taken to prevent future manure releases and freeboard violations and inform the Department of his facilities' maximum animal capacity, annual manure production volume and manure storage structure volume

5. On September 3, 2010, the Department sent Mr. Pals a letter via certified mail, informing him that the written response submitted to the Department was inadequate. This response failed to provide the following information: (1) maximum animal capacity; (2) annual manure production volume; and (3) manure storage structure volume. In this letter the Department explained that 567 IAC 65.5(2) "b" requires that an animal feeding operation institute necessary remedial actions to eliminate the conditions listed in subrule 567 IAC 65.5(1) if the operation receives a written notification from the Department of the need to correct the conditions. Mr. Pals was asked to submit this information by September 15, 2010. On September 15, 2010 the information was submitted.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards relating to the operation and construction of animal feeding operations and the conditions under which the Department shall issue permits to such operations, and relating to the disposal of manure resulting from animal

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feeding operations. The Commission has done so at 567 IAC Chapters 60-65. Chapter 65, in particular, relates to animal feeding operations

2. Iowa Code section 459.103 requires the Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC Chapter 65

3. 567 IAC 65.2(3), requires that "Minimum level of waste control for a confinement feeding operation shall be the retention of all wastes between periods of application." Mr. Pals allowed the uncovered formed manure structure to overflow. The manure appeared to have been overflowing for longer than one week. Therefore, the above stated facts show noncompliance with this provision.

4. 567 IAC 65.2(3)"b" requires that manure stored in an unroofed formed manure storage structure shall be removed from the structure as necessary to maintain a minimum of one foot of freeboard in the structure. It was evident that a minimum of one foot freeboard was not being maintained. Therefore, the above stated facts show noncompliance with this provision.

5. 567 IAC 65.2(7) requires that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. The overflow of manure from the uncovered formed manure storage pit was not proper land application. Therefore the above stated facts indicate a violation of this provision.

6. 567 IAC 65.2(9) requires a person storing, handling, transporting, or land applying manure from a confinement feeding operation who becomes aware of a release shall notify the Department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release. Grant Pals admitted to the Department that he was aware of the release and thought it had been going on for about a week, yet he never notified the Department. Therefore, the above stated facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the Department hereby orders and Mr. Pals consents to do the following:

1. Mr. Pals shall retain all manure in accordance with the laws of the state of Iowa; and
2. Mr. Pals shall pay a penalty in the amount of \$6,500.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. The Department estimates that Mr. Pals saved approximately \$1,500.00 by not transferring the manure from the overflowing uncovered formed manure storage pit to another storage pit that was nearly empty on his property. For that reason, \$1,500.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves multiple violations of rules, statutory provisions and permit conditions. These regulations are the backbone of the animal feeding operation program and are designed to protect the environment. Such violations threaten the integrity of

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this program. Moreover, Mr. Pals failed to timely report the manure release, the reporting requirement is designed to minimize environmental impact. Once the Department is notified of a release it can assist in determining the best response. It is apparent from statements made by Grant Pals and from observations made by Mr. Wiklund that the manure release was ongoing for a minimum of 7 days. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the four above-cited violations. However, in an effort to settle the case, the Department has decided to handle this administratively therefore, \$3,000.00 is assessed for this factor.

c. Culpability. The storage of manure is an activity that poses a substantial environmental threat and therefore, demands the highest level of care. The manure release which is the subject of this Order occurred in violation of multiple rule, statutory and permit conditions. Moreover, in 1999 Mr. Pals was cited for the same violation which caused this manure release; failure to maintain one foot of freeboard. This shows a complete disregard for the laws of the State of Iowa and that the appropriate standard of care was not applied. Therefore, \$2,000.00 is assessed for culpability.

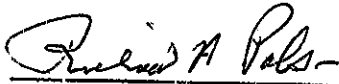
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mr. Pals. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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Richard A. Pals, in his personal capacity
and as President of Diamond K Company

Dated this 11 day of
Jan, 2010 ~~2011~~



Patricia L. Boddy, Interim Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 12 day of
Jan, 2011
2010

EPA, Field Office 2, Carrie Schoenebaum; Eric Wiklund, VIII B 4, C 2, D 2 (b).